Human Rights

NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fact Sheet No. 19

World Campaign for Human Rights

Introduction

The United Nations is engaged in a wide range of activities aimed at fulfilling one of its principal purposes—the promotion and protection of human rights. Of great importance is the complex machinery which has been set up under various international covenants and conventions to establish standards, monitor implementation, promote compliance and investigate violations of human rights. In addition to these activities, the United Nations also provides practical assistance to States in their efforts to protect and promote human rights, and informs the public about the rights to which it is entitled.

These structures and activities permit the United Nations to play a pivotal role in the realization of human rights and fundamental freedoms. However, it is important to acknowledge that the UN has finite resources and inherent limitations on its capacity for direct action, particularly in individual cases. As a practical matter, one organization can never hope to keep an eye on every situation. Neither can it investigate every alleged violation of human rights or bring relief to all victims.

For these reasons, the international system relies heavily on the support it receives from regional human rights systems such as those operating in Europe, Africa and America. Additional support comes from Governments and from concerned non-governmental organizations. Each of these groups has a special role to play in the development of a universal culture of human rights. Non-governmental organizations, for example, by their very nature, have a freedom of expression, a flexibility of action and a liberty of movement which allow them to perform tasks which Governments and intergovernmental organizations are unable or may even be unwilling to perform. Regional human rights systems have reinforced international standards and machinery by providing the means by which human rights concerns can be addressed within the particular social, historical and political context of the region concerned.

The role of national Governments in the realization of human rights is particularly important. Human rights involve relationships among individuals, and between individuals and the State. Therefore,

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the practical task of protecting and promoting human rights is primarily a national one, for which each State must be responsible. At the national level, rights can be best protected through adequate legislation, an independent judiciary, the enactment and enforcement of individual safeguards and remedies, and the establishment of democratic institutions. In addition, the most effective education and information campaigns are likely to be those which are designed and carried out at the national or local level and which take the local cultural and traditional context into account.

When States ratify a human rights instrument, they either incorporate its provisions directly into their domestic legislation or undertake to comply in other ways with the obligations contained therein. Therefore, universal human rights standards and norms today find their expression in the domestic laws of most countries. Often, however, the fact that a law exists to protect certain rights is not enough if these laws do not also provide for all of the legal powers and institutions necessary to ensure their effective realization.

This problem of effective implementation at the national level has, particularly in recent times, generated a great deal of international interest and action. The emergence or re-emergence of democratic rule in many countries has focused attention on the importance of democratic institutions in safeguarding the legal and political foundations upon which human rights are based.

It has therefore become increasingly apparent that the effective enjoyment of human rights calls for the establishment of national infrastructures for their protection and promotion. Official human rights institutions have been set up by many countries in recent years. While the tasks of such institutions may vary considerably from country to country, they share a common purpose and for this reason are collectively referred to as *national institutions for the protection and promotion of human rights*.

The following pages do not provide an exhaustive description of the full range of existing national institutions. A separate manual on this subject, containing practical, detailed advice to Governments interested in establishing or strengthening such institutions is being developed by the Centre for Human Rights. This Fact Sheet takes a more general approach to national institutions—describing, and attempting to explain their emergence in the context of the general evolution of efforts to protect and promote human rights both within and outside of the United Nations system.

The United Nations and national institutions for the protection and promotion of human rights

While the world-wide interest in national institutions is a relatively recent phenomenon, the original concern of the United Nations with such institutions dates back to 1946 when the issue was first addressed by the Economic and Social Council. The Council asked Member States to consider "the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights".

In 1960 the Economic and Social Council, in a resolution which recognized the unique role national institutions could play in the protection and promotion of human rights, invited Governments to encourage the formation and continuation of such bodies as well as to communicate their ideas and information on the subject to the Secretary-General. This process is an on-going one and reports on information received are regularly submitted by the Secretary-General to the Commission on Human Rights, the General Assembly and to Member States.

As standard-setting in the field of human rights gained momentum during the 1960s and 1970s, discussions on national institutions became increasingly focused on the ways in which these bodies could assist in the effective implementation of these international standards. In 1978, the Commission on Human Rights decided to organize a seminar on national and local institutions to draft guidelines for the structure and functioning of such bodies. Accordingly, the Seminar on National and Local Institutions for the Promotion and Protection of Human Rights was held in Geneva from 18 to 29 September 1978 during which a series of guidelines was approved. These guidelines suggested that the functions of national institutions should be:

(*a*) To act as a source of human rights information for the Government and people of the country;

(*b*) To assist in educating public opinion and promoting awareness and respect for human rights;

(*c*) To consider, deliberate upon, and make recommendations regarding any particular state of affairs that may exist nationally and that the Government may wish to refer to them;

(*d*) To advise on any questions regarding human rights matters referred to them by the Government;

(*e*) To study and keep under review the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights, and to prepare and submit reports on these matters to the appropriate authorities;

(*f*) To perform any other function which the Government may wish to assign to them in connection with the duties of that State under those international agreements in the field of human rights to which it is party.

In regard to the structure of such institutions, the guidelines recommended that they should:

(*a*) Be so designed as to reflect in their composition, wide cross-sections of the nation, thereby bringing all parts of that population into the decision-making process in regard to human rights;

(*b*) Function regularly, and that immediate access to them should be available to any member of the public or any public authority;

(*c*) In appropriate cases, have local or regional advisory organs to assist them in discharging their functions.

The guidelines were subsequently endorsed by the Commission on Human Rights and by the General Assembly. The Commission invited all Member States to take appropriate steps for the establishment, where they did not already exist, of national institutions for the protection and promotion of human rights, and requested the Secretary-General to submit a detailed report on existing national institutions.

Throughout the 1980s, the United Nations continued to take an active interest in this topic, and a series of reports, prepared by the Secretary-General, was presented to the General Assembly.[1] It was

[1] A/36/440 (1981), A/38/416 (1983), E/CN.4/1987/37 (1987), E/CN.4/1989/47 and Add.1 (1989), E/CN.4/1991/23 and Add.1 (1991).

during this time that a considerable number of national institutions were established—often with the assistance of the Advisory Services Programme of the Centre for Human Rights.

In 1990, the Commission on Human Rights called for a workshop to be convened with the participation of national and regional institutions involved in the protection and promotion of human rights. The workshop was to review patterns of cooperation of national institutions with international institutions, such as the United Nations and its agencies, and to explore ways of increasing their effectiveness. The conclusions of this important workshop, held in Paris in October 1991, are summarized in the annex to this Fact Sheet.

What is a ''national human rights institution''?

Today, human rights considerations are relevant to almost every sphere of governmental activity and indeed, to many other areas of public and private life. The number and range of ''institutions'' concerned with human rights issues reflects this reality. The activities of churches, trade unions, the mass media and many non-governmental organizations touch directly on human rights issues, as do those of most government departments, the courts and the legislature.

The concept of a national human rights institution is, however, far more specific—referring as it does to a body whose functions are specifically defined in terms of the promotion and protection of human rights. While no two institutions are exactly the same, a number of similarities can be identified which serve to separate these institutions from the various entities mentioned above. The national institutions being considered here are all administrative in nature—in the sense that they are neither judicial nor law-making. As a rule, these institutions have on-going, advisory authority in respect to human rights at the national and/or international level. These purposes are pursued either in a general way, through opinions and recommendations, or through the consideration and resolution of complaints submitted by individuals or groups. In some countries, the Constitution will provide for the establishment of a national human rights institution. More often, such institutions are created by legislation or decree. While many national institutions are attached, in some way or another, to the executive branch of

government, the actual level of independence which they enjoy will depend on a number of factors including membership and the manner in which they operate.

The majority of existing national institutions can be grouped together in two broad categories; "human rights commissions" and "ombudsmen". Another less common, but no less important variety are the "specialized" national institutions which function to protect the rights of a particular vulnerable group such as ethnic and linguistic minorities, indigenous populations, children, refugees or women. These three categories of national institutions are considered in detail below.

Human rights commissions

In many countries, special commissions have been established to ensure that the laws and regulations concerning the protection of human rights are effectively applied. Most commissions function independently from other organs of government, although they may be required to report to the legislature on a regular basis.

In keeping with their independent nature, commissions are generally composed of a variety of members from diverse backgrounds but each with a particular interest, expertise or experience in the field of human rights. Each country may have its specific requirements or restrictions for the selection of members, such as quotas on the number of representatives or candidates from different professional categories, political parties, or localities.

Human rights commissions are concerned primarily with the protection of nationals against discrimination and with the protection of civil and other human rights. The precise functions and powers of a particular commission will be defined in the legislative act or decree under which it is established. These laws or decrees will also serve to define the Commission's jurisdiction by specifying the range of discriminatory or violative conduct that it is empowered to investigate. Some commissions concern themselves with alleged violations of any rights recognized in the constitution. Others may be able to consider cases of discrimination on a broad range of grounds including race, colour, religion, sex, national or ethnic origin, disability, social condition, sexual orientation, political convictions and ancestry.

One of the most important functions vested in a human rights commission is to receive and investigate complaints from individuals (and occasionally, from groups) alleging human rights abuses committed in violation of existing national law. In order to properly carry out its tasks, the commission will usually be capable of obtaining evidence relating to the matter under investigation. Even if only used rarely, this power is important in that it guards against the possibility of frustration through lack of cooperation on the part of the person or body complained against. While there are considerable differences in the procedures followed by various human rights commissions in the investigation and resolution of complaints, many rely on conciliation and/or arbitration. In the process of conciliation, the commission will attempt to bring the two parties together in order to achieve a mutually satisfactory outcome. If conciliation fails to resolve the dispute, the commission may be able to resort to arbitration in which it will, after a hearing, issue a determination.

It is not usual for a human rights commission to be granted authority to impose a legally binding outcome on parties to a complaint. However, this does not mean that the settlement or appropriate remedial steps recommended by the commission can be ignored. In some cases, a special tribunal will hear and determine issues outstanding from an unresolved complaint. If no special tribunal has been established, the commission may be able to transfer unresolved complaints to the normal courts for a final and binding determination.

Another important function of a human rights commission is systematically to review the government's human rights policy in order to detect shortcomings in human rights observance and to suggest ways of improving it. Human rights commissions may also monitor the State's compliance with its own and with international human rights laws and if necessary, recommend changes. The ability of a commission to initiate enquiries on its own behalf is an important measure of its overall strength and probable effectiveness. This is particularly true in regard to situations which involve persons or groups who do not have the financial or social resources to lodge individual complaints.

The realization of human rights cannot be achieved solely through legislation and administrative arrangements. In recognition of this fact, commissions are often entrusted with the important responsibility of improving community awareness of human rights. Promoting and educating about human rights may involve informing the public

about the commission's own functions and purposes; provoking discussion about various important questions in the field of human rights; organizing seminars; holding counselling services and meetings; as well as producing and disseminating human rights publications.

The ombudsman

The office of ombudsman is now established in a number of countries. The ombudsman (who may be an individual or a group of persons) is generally appointed by the parliament acting on constitutional authority or through special legislation. The primary function of this institution is to protect the rights of individuals who believe themselves to be the victim of unjust acts on the part of the public administration. Accordingly, the ombudsman will often act as an impartial mediator between an aggrieved individual and the government.

While the institution of ombudsman is not exactly the same in any two countries, all follow similar procedures in the performance of their duties. The ombudsman receives complaints from members of the public and will investigate these complaints provided they fall within the ombudsman's competence. In the process of investigation, the ombudsman is generally granted access to the documents of all relevant public authorities. He or she will then issue a statement of recommendation based on this investigation. This statement is given to the person lodging the complaint, as well as to the office or authority complained against. In general, if the recommendation is not acted upon, then the ombudsman may submit a specific report to the legislature. This will be in addition to an annual report to the same body which may include information on problems which have been identified and contain suggestions for legislative and administrative change.

While any citizen who believes that his or her rights have been violated may submit a complaint to the ombudsman, many countries require that the complainant first exhaust all alternate legal remedies. There may also be time limits imposed on the filing of complaints, and while the ombudsman's authority usually extends to all aspects of public administration, some are not empowered to consider complaints involving presidents, ministers or the judiciary.

Access to the ombudsman also varies from country to country. In many countries individuals may lodge a complaint directly with the

ombudsman's office. In other countries complaints may be submitted through an intermediary such as a member of parliament. The complaints made to the ombudsman are generally confidential, and the identity of the complainant is not disclosed without that person's consent.

The ombudsman is not always restricted to acting upon complaints and may be able to commence an investigation on his or her own initiative. Self-initiated investigations often relate to issues which the ombudsman may have determined to be of broad public concern, or issues which affect group rights and are therefore not likely to be the subject of an individual complaint.

In many respects, the powers of the ombudsman are quite similar to those of human rights commissions. Both may receive and investigate individual complaints. In principle, neither has the power to make binding decisions. There are nevertheless some differences in the functions of the two bodies which explain why some countries establish and simultaneously maintain both types of institution.

In most cases, the primary function of the ombudsman is to ensure fairness and legality in public administration. Human rights commissions are more specifically concerned with discrimination, and in this respect will often address themselves to the actions of private bodies and individuals as well as the government. In general, the principal focus of activity for an ombudsman is individual complaints. However, ombudsmen are increasingly engaged in a wider range of activities for the protection and promotion of human rights.

Specialized institutions

Vulnerable and minority groups differ from country to country, but the most common problem affecting them all is that of discrimination. Members of the community who are most often recognized by governments as needing specialized human rights institutions to protect their interests are persons belonging to ethnic, linguistic and religious minorities, indigenous populations, aliens, migrants, immigrants, refugees, children, women, the poor and the disabled.

In general terms, such specialized institutions are established to promote government and social policy which has been developed for the protection of that particular group. For the most part, these institu-

tions perform functions similar to those of the less specific human rights commissions and ombudsmen described above. They are usually authorized to investigate instances and patterns of discrimination against individuals in the group and against the group as a whole. While generally able to investigate complaints brought by a member of the group against another person or against a government body, these specialized agencies are, like other national human rights institutions, rarely empowered to make binding decisions or to initiate legal action.

As well as providing material and consultative assistance on an individual and collective basis, such agencies will frequently be responsible for monitoring the effectiveness of existing laws and constitutional provisions as these relate to the group. In this way, they often act as consultants and advisors to parliament and the executive branch of government.

Some final points . . .

There are some who see no good reason for establishing special national machinery devoted to the protection and promotion of human rights. They may argue that these bodies are not a wise use of scarce resources and that an independent judiciary and democratically elected parliament are sufficient to ensure that human rights abuses do not occur in the first place.

Unfortunately, history has taught us differently. A body that is in some way separated from the responsibilities of executive governance and judicial administration is in a position to take a leading role in the field of human rights. By maintaining its real and perceived distance from the government of the day, such a body can make a unique contribution to a country's efforts to protect its citizens and to develop a culture respectful of human rights and fundamental freedoms.

Some countries have a long tradition of protecting human rights at the national level through the creation of such organs as human rights commissions or ombudsman offices. The majority of institutions, however, have been set up since the 1980s. This trend, which has been actively encouraged by the United Nations, is evidence of a growing momentum, both national and international, in support of human rights. Increasing interest in national human rights institutions should also be

viewed in light of recent democratization and reform processes which have been taking place in a great number of countries.

In the course of its involvement in the work of national institutions, the United Nations has come to realize that no single model of national institution can, or should, be recommended as the appropriate mechanism for all countries to fulfil their international human rights obligations. Although each nation can benefit from the experience of others, national institutions must be developed taking into account local cultural and legal traditions as well as existing political organization.

The United Nations has also recognized that not all States eager to develop or strengthen national institutions have the necessary technical and financial capacity to do so. The Centre for Human Rights, under its Programme of Advisory Services and Technical Cooperation, has provided expert and material assistance in this area to a number of countries in the last few years. It encourages Member States to request assistance for building or strengthening national institutions for human rights. Practical assistance for that purpose may be made available in the context of the advisory services programme of the Centre for Human Rights.

Human rights machinery of the kind described in this Fact Sheet cannot be expected to solve those problems which governments and the international community have been unable effectively to address. Neither are they set up to replace the human rights organs of the United Nations or non-governmental organizations working in the same area. Their role is clearly complementary, and a strengthening of such institutions can only enhance the effectiveness of both national and international systems for protection and promotion of human rights.

ANNEX

Principles relating to the status and functioning of national institutions for protection and promotion of human rights

Note: In October, 1991, the Centre for Human Rights convened an international workshop to review and update information on existing national human rights institutions. Participants included representatives of national institutions, States, the United Nations, its specialized agencies, intergovernmental and non-governmental organizations.

In addition to exchanging views on existing arrangements, the workshop participants drew up a comprehensive series of recommendations on the role, composition, status and functions of national human rights instruments. These recommendations, which were endorsed by the Commission on Human Rights in March 1992, are summarized below.

A. Competence and responsibilities

1. A national institution shall be vested with competence to protect and promote human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, *inter alia*, have the following responsibilities:

(*a*) To submit to the government, parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights. The national institution may decide to publicize them. These opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights. In that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights. It shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(ii) Any situation of violation of human rights which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the government;

(*b*) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

(*c*) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

(*d*) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence;

(*e*) To cooperate with the United Nations and any other agency in the United Nations system, the regional institutions and the national institutions of other countries which are competent in the areas of the protection and promotion of human rights;

(*f*) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

(*g*) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

B. Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

Trends in philosophical or religious thought;

Universities and qualified experts;

Parliament;

Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be inde-

pendent of the government and not be subject to financial control which might affect this independence.

3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

C. Methods of operation

Within the framework of its operation, the national institution shall:

1. Freely consider any questions falling within its competence, whether they are submitted by the government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

2. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

3. Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

4. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly consulted;

5. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

6. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the protection and promotion of human rights (in particular, ombudsmen, mediators and similar institutions);

7. In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to protecting and promoting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

D. Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

1. Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;

2. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;

3. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;

4. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations or administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

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No. 19 *National Institutions for the Promotion and Protection of Human Rights*

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